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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 323

ELMER F. CRAVALHO, et al., *Appellants*,

v.

WILLIAM S. RICHARDSON, et al., *Appellees*.

Upon Appeal from the United States District Court for the District of Hawaii

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the District of Hawaii (R. 582),[1] holding invalid, under the Equal Protection Clause of the Federal Constitution, the legislatively proposed provisional plan for the apportionment of seats in the Senate of the Hawaii Legislature, which is not yet reported, is set forth in Appendix A. (A. 1a) A prior opinion of the district court (R. 370), enjoining the parties including appellants Elmer F. Cravalho, et al., from enacting any

[1] Citations to the unprinted Record are hereafter: "R. "; to the printed Appendix: "A. "; to the unprinted Transcript of Proceedings: "TR. ".

legislation until reapportionment legislation satisfactory to the district court has been enacted, also unreported, is set forth in Appendix A. (A. 17a)

JURISDICTION

This action was instituted by the original plaintiffs Henrietta Davidson Holt, et al., citizens, taxpayers and electors of the United States and of the State of Hawaii, in the District Court for the District of Hawaii, under 42 U.S.Code §§ 1983, 1988, 28 U.S.Code § 1343 and 28 U.S.Code §§ 2201, 2202, to enjoin appellee William S. Richardson, Lieutenant Governor of Hawaii, from conducting the 1964 election for State legislative offices and to declare unconstitutional and unenforceable those portions of the Constitution of the State of Hawaii (Sections 2, 3 and 4 of Article III, Section 1 of Article XVI, and the proviso at the end of the sixth paragraph in Section 2 of Article XV) relating to the apportionment of the Senate and the House of Representatives of the State Legislature.

On August 24, 1964 John A. Burns, Governor of Hawaii, intervened as intervenor-plaintiff, and Nelson K. Doi, et al., (certain State senators) and appellants Elmer F. Cravalho, et al., (certain State representatives) intervened as intervenors-defendants.

On August 26, 1964, a three-judge court, convened pursuant to 28 U.S.Code § 2281 et seq., denied the prayer of the plaintiffs Henrietta Davidson Holt, et al., to enjoin the conduct of the 1964 election for State legislative offices. On February 17, 1965, the district court filed its Order, entered April 9, 1965, adjudging that certain provision of Article III, Section 2 covering the apportionment of the Senate and the said proviso of Article XV, Section 2 relating to the amend-

ments affecting representation in the Senate were unconstitutional and invalid and also holding that any change in the representation from any Hawaii senatorial district must be by constitutional amendment and not by statute. The Order also denied the prayer of John A. Burns to enjoin the 1966 election but provided, in lieu thereof, relief prompting reapportionment by enjoining the legislators from enacting any legislation until legislation pursuant to the provisions of Article XV of the Hawaii Constitution providing for the submission to the people of Hawaii by special election to be held not later than August 1, 1965, the question: "Shall there be a convention to propose a revision of or amendments to the constitution?", and for any and all acts required by law to implement such legislation, has been enacted into law.

Pursuant to motion of Nelson K. Doi, et al., and appellants Elmer F. Cravalho, et al., the district court, by Order of March 9, 1965, entered March 19, 1965, provisionally amended paragraph 4 of its Order of February 17, 1965, to allow the legislature to propose and submit to the district court for its approval a reapportionment plan of the Hawaii Senate providing thereby an opportunity to avoid the costly and circuitous route of accomplishing reapportionment at a constitutional convention. On April 14, 1965 a reapportionment plan of the Hawaii Senate was duly submitted to the district court by the Third Legislature. On April 28, 1965, the district court filed and entered its Order on the reapportionment plan of April 14, 1965 rejecting as unconstitutional the said reapportionment plan and thereby reinstating the Order of the district court of February 17, 1965, which enjoined the legislators from enacting any legislation until legis-

lation for the calling of a constitutional convention shall have been enacted.

A notice of appeal to this Court was filed on May 3, 1965 by John A. Burns, Governor of Hawaii. Separate notices of appeal to this Court were filed on May 7, 1965 by Nelson K. Doi, et al., and the appellants Elmer F. Cravalho, et al., respectively. On application of May 13, 1965 by the said John A. Burns, Justice Douglas of this Court, on May 21, 1965, granted a stay of the district court's injunction pending the timely docketing of an appeal to this Court for its consideration of the jurisdictional aspect of the case, the stay being further conditioned upon immediate expiration should this Court summarily dismiss the appeal or reverse or affirm the judgment below. The expiration of the stay in effect would reinstate the injunction enjoining the parties including appellants Elmer F. Cravalho, et al., from enacting any legislation until legislation for the calling of a constitutional convention shall have been enacted. The jurisdiction of this Court to review the decision of the district court on direct appeal is conferred by 28 U.S.Code § 1253; and such jurisdiction is customarily exercised. E.g. *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *WMCA* v. *Lomenzo*, 377 U.S. 633 (1964); *Davis* v. *Mann*, 377 U.S. 678 (1964); *Roman* v. *Sincock*, 377 U.S. 695 (1964); *Lucas* v. *Colorado General Assembly*, 377 U.S. 713 (1964).

FEDERAL AND STATE CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fourteenth Amendment to the Constitution of the United States.

2. Article III, Sections 1, 2, 3, 4 and 5, of the Constitution of the State of Hawaii, Revised Laws of

Hawaii 1955 (1963 Supp.), p. 10 et seq., relating to the apportionment of the Hawaii Senate and House of Representatives.

3. Article XVI, Section 1, of the Constitution of the State of Hawaii, Revised Laws of Hawaii 1955 (1963 Supp.), p. 22 et seq., which sets forth a schedule of the representative districts and the number of representatives to be elected from each district.

4. Article XV of the Constitution of the State of Hawaii, Revised Laws of Hawaii 1955 (1963 Supp.), p. 21 et seq., relating to the methods of revision and amendment of the Hawaii Constitution.

The above are set forth in Appendix B. (A. 1b et seq.)

QUESTIONS PRESENTED

1. Does the fact that the geographical boundaries of certain districts of one house of a bicameral legislature of the State of Hawaii are identical to, or coincide to a great degree with, the geographical boundaries of certain districts of the other house violate the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States?

2. Does the weight of the votes of the citizens in districts where the geographical boundaries for both senatorial and representative districts are identical or coincide to a great degree far exceed the weight of votes of citizens in districts where the geographical boundaries for senatorial and representative districts do not coincide, so that there is a violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States?

3. Does the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States necessarily require that the Hawaii Senate be apportioned in accordance with a rule of single-member districts where the House of Representatives, with single-member and multi-member districts, has been found to be constitutionally apportioned?

4. Does the reapportionment plan for the Hawaii Senate which the legislature of the State of Hawaii submitted to the district court on April 14, 1965, pursuant to the order of the district court, violate the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States?

5. Where the legislature of the State of Hawaii has constructed senatorial districts with substantial equality of population for each district in accord with the number of senators to be elected from the respective senatorial districts, does the legislature have the burden of justifying that such reapportionment plan does not operate to minimize or cancel out the voting strength of political, social, economic, or racial elements of the voting population, or do the opponents of such plan have the burden of demonstrating such invidious results?

6. Where the legislature of the State of Hawaii has constructed senatorial districts with substantial equality of population for each district in accord with the number of senators to be elected from the respective senatorial districts, and where the House of Representatives, with single-member and multi-member districts, has been found to be constitutionally apportioned, does the legislature of the State of Hawaii have the burden of justifying that the two houses comple-

ment each other so that there is no violation of the United States Constitution, or do the opponents of such reapportionment plan have the burden of demonstrating that the two houses fail to complement each other to such an extent that there is a violation of the United States Constitution?

7. Did the district court, in seeking to compel the legislature of the State of Hawaii to enact reapportionment legislation in compliance with the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, abuse its discretion through the employment of excessive and drastic measures, to wit: the prohibition of enactment by the legislature of legislation essential for the operation of State and county governments in Hawaii and essential for the continuation of programs necessary for the health and welfare of the people of Hawaii until such time as reapportionment legislation has been passed to the satisfaction of the district court?

8. Where certain provisions of the Hawaii Constitution relating to the apportionment of the Hawaii Senate are invalid, does the legislature of the State of Hawaii have the authority to enact at least provisional reapportionment legislation relating to the Hawaii Senate, pending the adoption of valid amendments to the Hawaii Constitution providing for the reapportionment of the Hawaii Senate in accord with the United States Constitution?

STATEMENT OF THE CASE

In brief, this appeal challenges the decision of the United States District Court for the District of Hawaii (1) holding invalid, under the Equal Protection Clause

of the Federal Constitution, the legislatively proposed provisional plan for the apportionment of seats in the Senate of the Hawaii Legislature, (2) holding that any change in the representation from any Hawaii senatorial district must be by constitutional amendment thereby foreclosing provisional reapportionment by statute, and (3) enjoining the enactment by the legislators of any legislation until such time as reapportionment legislation has been passed to the satisfaction of the district court.

1. In Limine

The case was instituted in the United States District Court for the District of Hawaii by Complaint filed on August 13, 1964, by the original plaintiffs Henrietta Davidson Holt, et al., as citizens, taxpayers and electors of the State of Hawaii, on their behalf and on behalf of others, seeking a declaratory order that those sections of the Hawaii Constitution which dealt with the apportionment of the Hawaii Legislature had deprived and continued to deprive the complaining citizens of liberty and property without due process of law and of the equal protection of the laws, all in violation of the Fourteenth Amendment of the United States Constitution. (R. 2)

The Complaint also sought an injunction against the Lieutenant Governor of the State of Hawaii, the officer charged with the responsibility for supervision of State elections, prohibiting him from proceeding with the 1964 general election until such time as the Hawaii Legislature had been reapportioned to the satisfaction of the district court. Failing satisfactory reapportionment through the efforts of the legislature itself, the Complaint requested that the district court undertake to reapportion the legislature.

On August 24, 1964 appellants Elmer F. Cravalho, et al., being certain members of the Hawaii House of Representatives, intervened in the case below as party defendants, with a view to making the position of the House known to the district court and facilitating the reapportionment. (R. 87)

After denying a preliminary injunction against the holding of the 1964 general election, (TR. 156 August 26, 1964) the district court held a full hearing on the Complaint in January, 1965. After that hearing, the district court, by Order dated February 17, 1965, and entered on April 9, 1965, held that the provisions of the Hawaii Constitution relating to apportionment of the State Senate are contrary to the Equal Protection Clause of the Fourteenth Amendment. (A. 37a) The district court declared that the Hawaii Legislature could not, by statute, effect reapportonment (A. 35a) and directed that the legislators provide for a 1965 special election looking toward the convening of a constitutional convention to propose an amendment to the Hawaii Constitution (to be then submitted to the electorate) effecting at least the reapportionment of the Senate and enjoined the legislators from enacting any legislation until legislation for the calling of a constitutional convention shall have been enacted. (A. 37a)

By Order of March 9, 1965, entered March 19, 1965, the lower court provisionally amended Paragraph 4 of its Order of February 17, 1965 (which had not at that time been entered) to permit the legislature (a) to enact a provisional reapportionment and redistricting plan for the Senate; (b) to adopt a proposed constitutional amendment embodying pertinent provisions of the foregoing reapportionment and redistricting

plan for submission to the electorate at the 1966 general election; and (c) to enact legislation to submit to the electorate the question: Shall there be a convention to propose a revision of or amendments to the constitution? This Order, like the one of February 17th, demanded that the plan be approved by the district court; failing approval, the Order of February 17th demanding legislation for implementing a constitutional convention would again become effective. (R. 448, R. 454)

On March 18, 1965, the legislature advised the district court that a provisional plan, in substance approved by both Houses, was then in conference committee and about ready to be presented to the district court, whereby the Senate was reapportioned by dividing the State into the same original and existing six senatorial districts, changing only the number of senators allocated to each district, based upon the use of the method of equal proportions. (A. 3a) By that March 18th plan, the senators were apportioned as follows:

County	Senatorial District	No. of Senators
Hawaii	First	2
"	Second	1
Maui	Third	2
Honolulu	Fourth	9
"	Fifth	10
Kauai	Sixth	1

The legislature quickly thereafter was informally made to understand by the district court that such a grossly lumpy apportionment of senators, whereby forty per cent of the entire Senate would come from one senatorial district and thirty-six per cent from

another alongside, could never be approved, and the plan was forthwith withdrawn from conference committee for reconsideration by the House. Shortly thereafter, the district court informally indicated that because Hawaii had a multi-member district House, the district court would require a rule of single-member districts for the Senate so that any other than single-member senatorial districting would have to be justified to the district court. (A. 4a)

2. The Proposed Provisional Plan

Pursuant to the Order of March 9, 1965, entered March 19, 1965, and after the informal advice of the district court with respect to the March 18th plan and the rule of single-member districts for the Senate which appellants Elmer F. Cravalho, et al., challenge herein, the legislature, on April 14, 1965, passed and sent to the district court the following bills: (a) H. B. 987, the proposed provisional senatorial reapportionment plan; (b) H. B. 773, the proposed constitutional amendment embodying that same plan; and (c) H. B. 986, submitting to the electorate in the 1966 general election the question of the calling of a constitutional convention. (R. 536) By H. B. 987, the State was divided into eight senatorial districts, viz.:

County	Senatorial District	No. of Senators	1964 Registered Voters per District
Hawaii	First	3	28,130
Maui	Second	2	18,786
Honolulu	Third	3	27,073
"	Fourth	4	35,780
"	Fifth	4	39,361
"	Sixth	4	40,629
"	Seventh	4	37,336
Kauai	Eighth	1	12,266

The reports of the conference committee on the proposed provisional plan (H. B. 987), as well as the proposed plan for the constitutional amendment (H. B. 773) embodying the same, setting forth the conference committee's reasons for redistricting the Senate on a multi-member district basis were also presented. (R. 536-579)

The legislature had apportioned, as nearly as it believed was practicable, one senator to every 9,500 registered voters, and had relied heavily on the standards of compactness and contiguity in drawing the district lines. (R. 558) It had also given recognition to the political subdivisions determined by the insular exigencies of Hawaii with its many islands as well as to the natural and historical boundary lines. (R. 558)

3. The Hearing And Decision

At the hearing on April 15, 1965 for the presentation of the proposed provisional senatorial reapportionment plan, Robert Schmitt, a statistician, testified that the several district lines followed excellent statistical or historical boundaries and resulted in logical lines of division. (TR. 221-227 April 15, 1965) The district court, however, held, in its Order of April 28, 1965, that the Senate plan failed to sufficiently complement the House apportionment in that the legislature in setting up the senatorial districts ignored such factors as community of interests, community of problems, socio-economic status, political and racial factors and created geographical boundaries of some senatorial districts so that they were identical to or coincided to a great degree with the geographical boundaries of some representative districts of the House resulting in a disproportional monolithic command for the

majorities within such monolithic political units to the prejudice and dilution of the weight of the votes of the minorities therein as well as of all other electors of the State without. (A. 11a) The district court emphasized by stating:

"While it is a fundamental factor under the decisions of The Court, population is not the sole definitive measure for setting up either representative or senatorial districts. Compactness and contiguity of the territory are admittedly also factors, but community of interests, community of problems, socio-economic status, political and racial factors—each and all must be considered, and not only must the electoral districts be laid out with the totality of those factors having been taken into consideration, but even more, the sum total of all of the districting must result in substantial equality of meaningful representation to each and all of the voters of the State. 'All who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit. *Gray* v. *Sanders,* 372 U.S. 368, 379.' " (A. 12a)

"Apparently, ethnic, political, industrial, economic, social, occupational factors, and community of interests and problems were given little if any consideration by the Legislature." (A. 6a)

It was never contended that there was not "substantial equality of population" among the eight senatorial districts under the proposed provisional senatorial plan, and the district court agreed that the number of registered voters per senatorial district conformed to the standards required under the method of

equal proportions prescribed by the Constitution of the State of Hawaii.[2] (A. 5a)

The district court nevertheless found the proposed provisional Senate plan, having failed to meet the test of equality of representation set down by this Court, to be invalid and disapproved the plan. (A. 15a)

Following the district court's ruling of April 28, 1965, John A. Burns, Governor of Hawaii, filed his timely notice of appeal to this Court (R. 612), and Nelson K. Doi, et al. and appellants Elmer F. Cravalho, et al., being desirous of bringing up for review other portions of the orders appealed from, filed their timely notices of appeal separately to this Court. (R. 641, R. 651)

THE QUESTIONS ARE SUBSTANTIAL

The Hawaii Legislature in good faith constructed State senatorial districts out of its geography of islands, which meet the equal-population standard of *Reynolds* v. *Sims,* 377 U.S. 533. It was not contended that the legislature failed to divest the less populated areas of their over-representation. The district court agreed that there was substantial equality of population among the proposed senatorial districts. However, the district court held the senatorial reapportionment plan unconstitutional. The court below laid down certain constitutional tests, which appellants herein believe unwarranted and unnecessary to achieve substantial equality of the weight of votes.

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[2] The district court had earlier held, by its Order of February 17, 1965, that the registered voter basis was a constitutionally valid "population" basis and that the House was validly apportioned under the method of equal proportions. (A. 31a)

This appeal presents novel and substantial questions with respect to these constitutional tests, purportedly based on the equal-population principle of *Reynolds* v. *Sims, supra,* by which the district court rejected as unconstitutional the reapportionment plan of the Hawaii Legislature and reinstated its permanent injunction against the parties in this case, including appellants Elmer F. Cravalho, et al., from enacting any legislation until certain reapportionment legislation satisfactory to the district court has been passed.

A. The Fact That the Geographical Boundaries of Certain Districts of One House of a Bicameral Legislature Are Identical To, Or Coincide To a Great Degree With, the Geographical Boundaries of Certain Districts of the Other House Does Not Violate the Equal Protection Clause.

According to the district court, "monolithic" political units violate the Equal Protection Clause of the Fourteenth Amendment. Where the geographical boundaries of certain districts of one house are identical to, or coincide to a great degree with, the geographical boundaries of certain districts of the other house, this situation results in the so-called "monolithic" political units.

The district court stated that the majorities in such "monolithic" districts are given a disproportional monolithic command, not only within the district, but also as compared to voters in non-"monolithic" districts.

Appellants herein believe that the so-called "monolithic" districts are not per se unconstitutional. Where all of the senatorial and representative districts have substantial equality of population in accord with the number of legislators to be elected from the respective

districts, the voters in the "monolithic" districts and the voters in the non-"monolithic" districts have votes of substantially equal weight.

The question of "monoliths" is substantial, because the district court held that in order to achieve equality of voting power there should not be any such "monoliths" in the reapportionment plan. This question is new and has far-reaching effect and importance to reapportionment plans throughout the nation.

B. The Equal Protection Clause Does Not Necessarily Require That One House of a Bicameral Legislature Be Apportioned In Conformity With a Rule of Single-Member Districts.

The district court found the apportionment of the Hawaii House of Representatives, with single-member and multi-member districts, to be constitutionally valid. The court below also stated that because Hawaii had a multi-member district house, any other than single-member senatorial districting would have to be justified to the district court.

The Court has stated that single-member districts may be the rule in one State, while another State might desire multi-member districts. *Reynolds* v. *Sims*, 377 U.S. 533, at p. 579.

The Hawaii Legislature chose to construct multi-member senatorial districts (except for one single-member district on the island of Kauai). All the senatorial districts had substantial equality of population in accord with the number of senators to be elected from the respective districts. Yet the district court demanded that the Hawaii Legislature construct senatorial districts in conformity with a rule of single-member districts.

Appellants herein believe that a State may choose multi-member districts as the rule in both houses of its legislature. Again, this question is substantial and important to the accomplishment of valid reapportionment.

C. Where the Hawaii Legislature Has Constructed Districts With Substantial Equality of Population, the Opponents of Such Reapportionment Plan Have the Burden of Demonstrating That the Plan Operates To Minimize Or Cancel Out the Voting Strength of Political, Social, Economic, Or Racial Elements of The Voting Population.

The Hawaii Legislature constructed districts with substantial equality of population without regard to race, sex and socio-economic factors. The court below demanded that the legislature consider these factors and justify the districting plan with such factors.

Appellants herein contend that (1) where the districts have substantial equality of population and (2) where the legislature has constructed the districts without attempting to dilute the voting strength of any political, social, economic or racial element, then the opponents of such reapportionment plan have the burden of demonstrating invidious results, if any. *Fortson* v. *Dorsey*, 379 U.S. 433.

This question is one of grave import, because it concerns the proper judicial scrutiny of State legislative apportionment plans.

D. The District Court, In Enjoining Appellants From Enacting Any Legislation Until Certain Reapportionment Legislation Satisfactory To The District Court Has Been Passed, Abused Its Discretion.

The district court rejected the senatorial reapportionment plan submitted by the Hawaii Legislature and thereby reinstated its injunction against the par-

ties, including appellants Elmer F. Cravalho, et al., from taking final action upon any legislation until legislation looking toward the convening of a constitutional convention to propose amendments to the Hawaii Constitution (to be then submitted to the electorate) effecting reapportionment of the Senate, has been passed.

This permanent injunction against the legislators from the performance of their legislative duty was a serious abuse of discretion. The injunction prohibits the legislators from providing essential legislation for the health and welfare of the people and the orderly functioning of State and county governments.

There is no justification for punishing the people of an entire State by the imposition of a procedural device to effect the compliance of certain parties with the orders of the lower court. This question is substantial and of vital import with respect to judicial relief.

E. The Hawaii Legislature Has Authority To Enact At Least Provisional Reapportionment Legislation, Pending the Adoption of Valid Amendments To the Hawaii Constitution Providing For the Reapportionment of the Hawaii Senate In Accord With the United States Constitution.

The district court declared that certain provisions of the Hawaii Constitution violated the Equal Protection Clause and are invalid. All parties to this case agree that the Hawaii Senate is malapportioned and that such provisions are invalid.

Appellants herein contend that the legislature has the authority to enact at least provisional senatorial reapportionment legislation, absent valid provisions of the Hawaii Constitution prescribing senatorial apportionment.

Further, appellants contend that the State may have a reasonable time to adopt amendments to the State constitution, i.e., at the 1966 election the legislature shall submit to the electorate for ratification amendments to the Hawaii Constitution providing for a permanent reapportionment plan, so long as the 1966 elections for State legislative offices are held according to a statutory apportionment plan which comports with the Equal Protection Clause.

This question is substantial and important, involving State legislative power to provide reapportionment legislation for an area covered by State constitutional provisions which are invalid and violative of the United States Constitution.

CONCLUSION

For the reasons stated, appellants respectfully submit that the questions presented are so substantial as to require plenary consideration.

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